



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Angela Beddawi

Applicant : Mark Skiba, et al. Confirmation No. 4165
Application No. : 10/027,700
Filed : December 20, 2001
Title : SYSTEMS AND METHODS FOR ELECTRONIC
DATA STORAGE MANAGEMENT

Grp./Div. : 2186
Examiner : Tuan V. Thai

Docket No. : 47612/G319

**SUBMISSION OF APPELLANT'S BRIEF
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Post Office Box 7068
Pasadena, CA 91109-7068
June 23, 2006

Commissioner:

Enclosed for filing is the Appellant's Brief for this application.


- X An extension of time to file Appellant's Brief is requested, and a Petition for Extension of Time and the applicable fee are enclosed.
- X Our check for \$500 to cover the fee for the appeal brief is enclosed.

Application No. 10/027,700

The Commissioner is hereby authorized to charge any further fees under 37 CFR 1.16 and 1.17 which may be required by this paper to Deposit Account No. 03-1728. Please show our docket number with any charge or credit to our Deposit Account. **A copy of this letter is enclosed.**

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By  _____
LeRoy T. Rahn
Reg. No. 20,356
626/795-9900

LTR/amb

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Commissioner:

Appellants Mark Skiba et al appeal from the final rejection of claims 9-13

1. REAL PARTY IN INTEREST

The real party in interest is Storactive Corporation, whose assets were recently acquired by Atempo, Inc.

2. RELATED APPEALS AND INTERFERENCES

None.

3. STATUS OF CLAIMS

Claims 9-13 are pending in the case and are subject to this appeal. These claims appear in an Appendix hereto.. Claims 1-8 and 14-21 have been cancelled.

05/30/2006 PRETEXT: 00000043-10027700

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4. STATUS OF AMENDMENTS

Claims 20 and 21 were cancelled after the Notice of Allowance.

5. PROCEEDINGS TO DATE

A final rejection was mailed on October 19, 2004. Appellants filed a petition for pre-appeal conference. Pursuant to a Panel Decision, prosecution was reopened and a new Office action was mailed. The new Office action rejected all the pending claims on a combination of the original references and several new references. This appeal ensued.

6. SUMMARY OF INVENTION

As described on page 28, lines 20-31 of the application, a copy of a file being backed up is temporarily stored. This is called "mirroring". As described on page 25, lines 20-35, the differences (changes) in the backed up file are stored. This is called "versioning". Mirroring and versioning are common processes in backing up files on a scheduled basis. As described on page 9, lines 3-11, on page 27, lines 24 and 25, and on page 33, line 32 to page 34, line 16 applicants' novelty lies in the process of backing up files **each time one of the files is updated**, rather than at regular intervals dictated by a time schedule.

7. ISSUES

The sole issue in this appeal is whether the claimed invention would have been obvious to one of ordinary skill in the art under 35 USC 103(b) from the Uemura and Dunn references of record.

8. GROUPING OF CLAIMS

All the claims stand or fall together. It is proposed that the Board select claim 9 and decide this appeal on the basis of that claim. The remaining claims on appeal are all directly or indirectly dependent on claim 9.

9. ARGUMENT

The examiner has rejected claim 9 under 35 USC 103(b) as obvious from the Uemura and Dunn references of record. He concedes that Uemura does not disclose the step of "storing a copy of the updated file and storing the differences in such copy each time one of the files is updated". However, referring to Dunn's Abstract, the examiner takes the position it would be obvious from the teachings of Dunn to perform the claimed storing steps **each time one of the**

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files is updated. This interpretation of Dunn flies in the face of the expressed language of his disclosure, including his Abstract, which talks about **periodic** data dumps and other data handling activities **at regular intervals**. Nowhere does Dunn suggest backing up data each time the data is updated as set forth in Claim 9.

10. CONCLUSION

Accordingly, the rejection of claims 9-13 is without basis and should be reversed.

11. CLAIM APPENDIX

9. A method for backing up data stored in files as the data is updated, the method comprising:

- updating one of the files;
- temporarily storing a copy of the updated file (mirroring);
- comparing the copy of the updated file with the file prior to updating;
- storing the differences in the copy of the updated file (versioning); and
- repeating the foregoing steps each time one of the files is updated.

10. The method of claim 9, additionally comprising restoring one of the files to a previous condition by:

- temporarily storing a copy of the current version of the file being restored;
- applying the stored differences to the stored copy of the current version to produce a copy of an earlier version of the file being restored, and
- repeating the two recited steps until a desired version of the file is produced.

11. The method of claim 10, in which the temporarily stored copy is stored until the next time one of the files is updated.

12. The method of claim 9, in which the temporarily stored copy is stored until the next time one of the files is updated.

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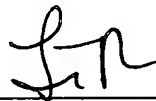
13. The method of claim 9, additionally comprising restoring one of the files to a previous condition by:

applying the stored differences to the updated file to produce a copy of a later version of the file being restored; and

repeating the recited step until a desired version of the file is produced.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By 

LeRoy T. Rahn
Reg. No. 20,356
626/795-9900

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